

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF COMMERCE

In the Matter of R.T. Homes, Inc.,

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for a hearing before Administrative Law Judge Barbara L. Neilson on December 23, 2004, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, R.T. Homes, Inc., 5300 Edinburgh Way, Big Lake, MN 55309. The OAH record closed at the conclusion of the hearing on December 23, 2004.

**NOTICE**

This Report is a recommendation, not a final decision. The Deputy Commissioner of Commerce will make the final decision after a review of the record. The Deputy Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Deputy Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Deputy Commissioner. Parties should contact Kevin M. Murphy, Deputy Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, telephone (651) 296-9411, to ascertain the procedure for filing exceptions or presenting argument to the Deputy Commissioner.

If the Deputy Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Deputy Commissioner, or upon the expiration of the deadline for doing so. The Deputy Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

**STATEMENT OF ISSUES**

The issue presented in this case is whether summary suspension of the residential building contractor license of the Respondent, R.T. Homes, is appropriate

under Minn. Stat. § 45.027, subd. 7(b), because the Respondent failed to complete outstanding items under a contract and has thereby been shown to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6), and failed to respond to the Department's letters and order to appear and thereby violated Minn. Stat. § 45.027, subd. 1a.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. The Notice of and Order for Hearing, Statement of Charges and Order for Summary Suspension initiating this contested case proceeding was served on the Respondent, R.T. Homes, Inc., via first class mail on December 7, 2004, at the following address: R.T. Homes, Inc., 5300 Edinburgh Way, Big Lake, MN 55309, Attn: Robert Charles Klein III.<sup>[1]</sup>

2. The Notice of and Order for Hearing, Statement of Charges and Order for Summary Suspension contained the following language:

The Respondent's failure to appear at the hearing or prehearing conference may result in a finding that the Respondent is in default, that the Department of Commerce's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.<sup>[2]</sup>

3. The Respondent did not make any request prior to the December 23, 2004, hearing for a continuance or any other relief. The Respondent did not appear at the hearing in this matter scheduled for December 23, 2004, or have an appearance made on its behalf. The Respondent did not contact the Administrative Law Judge to offer any excuse for its failure to appear at any time prior to the issuance of this Report.

4. Because the Respondent failed to appear at the hearing in this matter, it is in default.

5. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Statement of Charges and Order for Summary Suspension are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91.

2. The Notice of and Order for Hearing, Statement of Charges, and Order for Summary Suspension issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Statement of Charges and Order for Summary Suspension are hereby taken as true.

4. By failing to complete outstanding items under a contract and failing to respond to the Department's letters and order to appear, the Respondent, R.T. Homes, Inc., has violated Minn. Stat. §§ 326.91, subd. 1(6), and 45.027, subd. 1a, and summary suspension of the Respondent's residential building contractor license under Minn. Stat. § 45.027, subd. 7(b) is appropriate.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce's Order for Summary Suspension be affirmed.

Dated: December 28, 2004

/s/ Barbara L. Neilson

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BARBARA L. NEILSON

Administrative Law Judge

Reported: Default.

### **NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

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<sup>[1]</sup> Affidavit of Service by First Class Mail of Jean-Anne Gates attached to Notice of and Order for Hearing, Statement of Charges and Order for Summary Suspension.

<sup>[2]</sup> Notice of and Order for Hearing, Statement of Charges and Order for Summary Suspension, p. 3.